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August 17, 2007

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

**Re: Notice of Oral and Written Ex Parte Presentations in WT Docket Nos. 07-16
and 07-30**

Dear Ms. Dortch:

M2Z Networks, Inc. ("M2Z"), by its attorneys and pursuant to Section 1.1206 of the rules of the Federal Communications Commission ("FCC" or "Commission"), hereby files this notice of oral and written ex parte presentations.

On Wednesday, August 15, 2007, John Muleta, CEO of M2Z and Uzoma Onyeije, Vice President, Regulatory Affairs of M2Z, met with Renee Crittendon, Legal Advisor to Commissioner Jonathan Adelstein. During the meeting, Mr. Muleta discussed how action in the above-referenced proceedings would promote new entry and competition in the wireless and broadband markets. Mr. Muleta indicated that he and Mr. Onyeije would be happy to further discuss these matters under the appropriate ex parte rules. Mr. Onyeije showed Ms. Crittendon a video documenting the frustration of community center patrons in Raleigh, NC that have to use the center's dial-up Internet access service, showing the crying need for affordable, always-on broadband throughout America.

Mr. Muleta also provided to Ms. Crittendon a summary of the record in the above-referenced proceedings prepared by M2Z, a copy of which is attached hereto.

Sincerely,

/s/

Erin L. Dozier

cc: Ms. Renee Crittendon

**An Overview of the Record in Response to
M2Z Networks' License Application and Forbearance
Petition**

An Overview of the Record in Response to M2Z Networks' License Application and Forbearance Petition

Summary

A robust public debate has occurred concerning the merits of M2Z's pending license application—there are over 2,000 submissions from hundreds of interested parties in the two relevant Wireless Telecommunications Bureau dockets. The thousands of supportive comments from a diverse set of parties demonstrate the legal, technical, economic and public policy grounds for immediate grant of M2Z's application. While a handful of incumbents and spectrum speculators have expressed unwarranted concern, M2Z has rebutted all of their objections. In contrast, the *overwhelming* majority of the public comments before the Commission in support of the application remain un-rebutted by M2Z's opponents.

Thus, the record strongly endorses M2Z's assertion that its license application and slate of public interest commitments clearly represent the highest and best use of the 2155 to 2175 MHz spectrum band. This is further demonstrated by the fact that no other party was able to show that they have the desire and/or the wherewithal to abide by the service regulations and meet the threshold qualifications that define M2Z's proposed new service. The Commission, therefore, is left with a decision to move forward with M2Z's proposal—and promote the public interest—or to encourage delay and inaction. Given the overwhelming support for action here, M2Z encourages the Commission to take this opportunity to implement the desire of the public by granting its application.

Background of M2Z Networks' Application

In May 2006, M2Z Networks filed an application with the Commission seeking a 15-year renewable lease of 20 MHz of unpaired spectrum in the 2155-2175 MHz band, which is currently underutilized and undefined. M2Z has committed to use the spectrum, if the license is granted, to build a fast, free, family-friendly broadband network that will reach 95% of Americans within 10 years and provide a new service known as the National Broadband Radio Service ("NBRS"). The application also defines the service rules for NBRS to include both public interest and technical obligations that would operate as conditions to M2Z's license.

Some of M2Z's key obligations are listed below:

PUBLIC INTEREST	TECHNICAL
Provide free service to the public (<i>See License Conditions at 10a</i>)	Follow strict power limits (<i>See License Conditions at 6</i>)
Provide free service to public safety entities (<i>See License Conditions at 10b</i>)	Follow strict emission limits (<i>See License Conditions at 7</i>)
Pay to the U.S. Treasury a voluntary usage fee of 5% of the gross revenues derived from its Premium Services (<i>See License Conditions at 10c</i>)	Relocate fixed microwave service licensees (<i>See License Conditions at 8a</i>)
Interference Protection for incumbents (<i>See License Conditions at 10d</i>)	Relocate fixed BRS licensees (<i>See License Conditions item 8b</i>)
Block indecent content (<i>See License Conditions at 10e</i>)	Protect Part 101 incumbent operations (<i>See License Conditions at 9</i>)
Abide by CMRS regulations (<i>See License Conditions at 10f</i>)	Protect Part 21 incumbent operations (<i>See License Conditions at 9</i>)

Regulatory Timeline

Four months after the license application was filed, M2Z filed a Forbearance Petition. The Forbearance Petition noted two key statutory provisions that provided a timeline for Commission action here. Section 7 of the Telecommunications Act requires the Commission to act on M2Z's application by May 5, 2007 which has since passed. Additionally, Section 7 requires that the opponents to M2Z bear the legal burden to prove that M2Z's application is not in the public interest. Under Section 10 of the Act, the FCC must act upon M2Z's Forbearance Petition and the Application underlying it within one year of its filing, or September 1, 2007 (the FCC can extend this period by an additional 90 days). As noted in the Forbearance Petition, the Commission may use Section 10 as a tool to meet the Section 7 mandate.

On January 31, 2007, the FCC issued a Public Notice accepting M2Z's Application for filing and requesting comment on the application. The Public Notice also invited submission of other proposals for use of the 2155-2175 MHz spectrum band. The FCC set the following deadlines: March 16, 2007 for Petitions to Deny, March 26, 2007 for M2Z's Opposition, and April 3, 2007 for Replies to the Opposition.¹

¹ A separate pleading cycle was established for comments on the Forbearance Petition (March 19, 2007 for initial comments; April 3, 2007 for replies).

Support for the M2Z Networks Application and Vision

Hundreds of parties have filed supportive comments and other submissions urging the FCC to grant M2Z's Application and to consider M2Z's application in a timely manner. Of the more than 2,000 contributions to the record, the vast majority explicitly support M2Z's application and, based on M2Z's analysis, indicate support from people and organizations that represent over 35 million U.S. consumers. Only a handful of the filings (just over three dozen, in fact) are not supportive.

In addition to numerous bi-partisan members of Congress that have separately submitted letters on this matter in the record, M2Z's supporters include:

- Hundreds of state and local elected and appointed officials (See Attachment A below)
- A wide variety of national and other major organizations, including:
 - [National PTA](#)
 - [ACORN](#)
 - [The Technology Network](#)
 - [One Economy Corporation](#)
 - [Media Access Project](#)
 - [Enough Is Enough](#)
 - [Minority Media and Telecommunications Council](#)
 - [Internet Keep Safe Coalition](#)
 - [League for Innovation](#)
 - [Global Helping to Advance Women & Children](#)
 - [National Association of Telecommunications Officers and Advisers](#)
 - [Higher Education Wireless Access Consortium](#)
 - [United Families International](#)
 - [College Parents of America](#)
 - [National Troopers Coalition](#)
 - [Public Knowledge](#)
 - [Center for Digital Future](#)
 - [County Executives of America](#)
 - [Family Watch International](#)
 - [Electronic Retailing Association](#)
 - [California Association for Local Economic Development](#)
 - [National Association of State Utility Consumer Advocates](#)
 - [Diocese of Arlington](#)
 - [The Latino Coalition](#)
 - [Hispanic Technology and Telecommunications Partnership](#)
 - [National Institute for Staff and Organizational Development](#)
 - [International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers](#)
 - [National Center for Missing and Exploited Children](#)
 - [International Economic Development Council](#)
- Scores of small businesses and local organizations (See Attachment B below)
- A surfeit of individuals, who have written letters and sent e-mails to the Commission and their Congressional Representatives.

M2Z's supporters noted the public interest benefits of M2Z's proposal, including that it would:

- ✓ Create a competitive broadband marketplace;
- ✓ Bolster the competitiveness of small and independent businesses;
- ✓ Enhance educational opportunities;
- ✓ Bridge the digital divide;
- ✓ Provide a secondary, interoperable data network for public safety communications;
- ✓ Protect children from obscene, indecent and pornographic materials online; and
- ✓ Increase diversity in the management and ownership of communications outlets.

To view M2Z's letter of support please visit www.M2Znetworks.com/support

Petitions to Deny and Alternative Proposals

Summary Findings

The Petitions to Deny were filed by incumbents to protect their positions in the regulatory process and to maintain their dominance in spectrum holdings. None of the Petitions to Deny offered an alternative proposal to put this underutilized spectrum band to productive use, consistent with the public interest. Instead of providing solutions, the main goal of these pleadings appears to be nothing more than an effort to block a new competitive entrant.

The Alternative Proposals were submitted after M2Z's Application had been pending for ten months. Further validating the overwhelming benefits of M2Z's pending license application, none of the proposals represents a vision of the public interest that even approaches M2Z's voluntary commitments. Similarly, none of the proposals demonstrates the capability or the commitment that M2Z has made to build a fast, free and family-friendly network to spread the benefits of this useful spectrum nationwide.

Petitions to Deny and Replies

Thirteen Petitions to Deny M2Z's application were filed with the FCC, most of which were filed by incumbent providers of wireline or wireless broadband services or their trade associations.² None of the petitioners met the requirements under Sections 7 and 309(d) to demonstrate why M2Z's Application is not in the public interest. Despite the failure of

² The following parties filed petitions to deny or comments opposing the application: Leap Wireless Communications, Inc., EchoStar Satellite LLC, Consumer Electronics Association, CTIA - The Wireless Association, Motorola, Inc., T-Mobile USA, Wireless Communications Association International, Inc., Verizon Wireless, AT&T Inc., NextWave Broadband Inc., Rural Broadband Group, Information Technology Industry Council, TowerStream Corp., NetfreeUS, LLC.

the parties to meet their burden, M2Z comprehensively responded to the filings in its March 26, 2007 Opposition.³

The arguments in opposition to M2Z are designed to delay or prevent M2Z's entry into the marketplace and fall into three broad categories:

- Petitioners argued that the FCC lacks statutory authority to assign spectrum other than by auction. M2Z explained that the plain meaning of Section 309(j), as well as FCC precedent, gives the FCC broad authority to use a variety of mechanisms to assign spectrum in the public interest.
- Petitioners argued that the FCC, as a policy matter, should not deviate from the use of auctions to assign spectrum because auctions have been proven to be the superior assignment mechanism. M2Z directed the FCC's attention to the concurrently filed study by Dr. Simon Wilkie, a former Chief Economist of the FCC and current Director of the University of Southern California Center for Communications Law and Policy. Dr. Wilkie's study concludes that auctions do not work in all circumstances and are subject to self-interested, anti-competitive manipulation by incumbents.
- Petitioners argued that the FCC need not act on a proposal to enable free nationwide broadband because broadband adoption is being satisfactorily propagated in the U.S. One petitioner, AT&T, turned the competitive benefit of new entry on its head, and actually argued that a free broadband offering would stifle competition by making it less attractive for others to build broadband systems. M2Z pointed to widely available data identifying continuing gaps in the broadband adoption rate in the U.S., as well as OECD and ITU data concluding that the U.S. lags behind its global partners. M2Z noted that consumers who lack access to affordable broadband service do not have the luxury of waiting until incumbents find it convenient to their business plans to deploy affordable service to all Americans.

Alternative Proposals

Six Alternative Proposals (APs) were filed.⁴ None comes close to meeting the commitments offered in M2Z's application. M2Z's application stands out in thirteen key areas:

Free Service – M2Z has pledged to offer free broadband service to Americans on a nationwide basis.

³ An analysis of the issues raised on the record and M2Z's responses is included at Attachment C.

⁴ These were filed by the following: Open Range, NextWave, Commnet, NetfreeUS, McElroy, and TowerStream. We note that the Commission returned the McElroy application as defective. See McElroy Petition for Reconsideration, WT Docket No. 07-16 at 1 (filed Mar. 30, 2007). These proposals are analyzed against M2Z's application below in Attachment D.

- ✓ Four APs would not offer free service. (Commnet, NextWave, Open Range, TowerStream)
- ✓ One AP seeks to provide free service, but would rely primarily upon lessees for construction, deployment, and service offerings. (NetfreeUS)
- ✓ One AP provided a “copy-cat” application which proposes free service, but does not offer evidence of business or technical plans to support such service. (McElroy)

Buildout Commitments – M2Z has pledged to build a broadband wireless network to serve 95% of the population within 10 years.

- ✓ Two APs offered no buildout commitment. (NextWave, Open Range)
- ✓ Three APs made commitments with more modest milestones in terms of speed of deployment, total coverage, or both. (NetfreeUS, Commnet, TowerStream)
- ✓ One AP provided a “copy-cat” application which proposes identical buildout, but which, again, does not offer evidence of financial qualifications, business plans, or technical plans to support such a service. (McElroy)

USF – M2Z has pledged not to take any money from the Universal Service Fund (USF).

- ✓ Five APs did not commit to construct and operate a network without relying upon any USF. (NextWave, Commnet, NetfreeUS, McElroy, TowerStream)
- ✓ One AP states that it will deploy without relying on USF, but lacks a sufficient showing of a business plan or finances to support this assertion. This AP also did not commit to paying into the USF to the extent required by the FCC, unlike M2Z. Accordingly, M2Z concludes that this AP will not result in a net USF benefit. (McElroy)

Family-Friendly Service – M2Z has pledged to place a filter on its network to block indecent and obscene material on its free service.

- ✓ Four APs did not address this issue, or said explicitly that they would not filter content. (Open Range, NextWave, Commnet, NetfreeUS)
- ✓ One AP simply states it will comply with any “current or future federal requirements for the protection of minors” but apparently does not plan to offer filtering. (Commnet)
- ✓ One AP proposes optional filtering. (TowerStream)
- ✓ One AP made a similar commitment to that of M2Z, but does not explain how it will provide such service. (McElroy)

Public Safety Commitments – M2Z has pledged to make its network available to public safety at no recurring charge, and on a priority and preemptive basis in emergency situations:

- ✓ One AP states that it will make a service available to governmental or public safety entities for free. However, this AP is comparatively limited in scale and scope, due to significantly slower rollout proposed by this AP and the fact that most of the

network needs to be constructed and deployed by unidentified third parties. This AP will also offer preemption in emergencies. (NetfreeUS)

- ✓ One AP will offer a basic service for free—when and if it can develop compatible handsets. This AP made no commitment to priority access or pre-emption. (Commnet)
- ✓ One AP proposed a comparable offering to M2Z's—on the surface. In fact, because this AP does not make comparable construction commitments, it is not actually similar to M2Z. (McElroy)
- ✓ Two APs offered vague statements about priority access for first responders. (Open Range, TowerStream)
- ✓ One AP makes no commitment to provide a free, nationwide, and interoperable network for public safety entities. Furthermore, this AP would be ill-suited to public safety use because it involves a non-exclusive licensing regime, so there would be no way to prioritize public safety access or to ensure the protection of priority communications from interference. (NextWave)

Spectrum Usage Fee – M2Z has pledged to pay the U.S. Treasury 5% of the revenues from its subscription level service.

- ✓ Two APs would not make any payments based on revenues. (McElroy, TowerStream)
- ✓ Two APs did not address this issue. (Open Range, NextWave)
- ✓ One AP would pay \$50 million upon first renewal of license. (Commnet)
- ✓ One AP would pay 5% of gross revenues but did not offer a clear business model. (NetfreeUS)

New Entrant – M2Z is a new entrant to the broadband market and will compete with the current telecommunications and cable duopoly.

- ✓ Five APs are incumbents with substantial wireless holdings. (NextWave, Commnet, NetfreeUS, McElroy, TowerStream)
- ✓ One AP would be a new entrant. (Open Range)

Explicit Un-refuted Economic and Consumer Welfare Benefits – A recent study by former FCC Chief Economist Dr. Simon Wilkie found the consumer benefits of M2Z's pending application ranged from \$18 – 25 billion over the 15-year term of the license. Another expert economist, Dr. Kostas Liopiros, estimated even greater benefits to be realized by the introduction of M2Z's service. Dr. Liopiros concluded that, if M2Z enters the market by 2008, the American public will enjoy aggregate consumer benefits of **\$32.4 billion** over the 15-year term.

- ✓ No AP quantified the consumer benefits of their proposals. Just two APs even addressed the issue. (Open Range, NetfreeUS)

Interference Protection – M2Z has pledged that its use of the spectrum will not interfere with incumbents' use of their existing spectrum licenses. M2Z has also identified specific

rules with which it will comply (Part 27), and has pledged to relocate incumbents per FCC rules.

- ✓ Four APs did not specify technical and service rules. (Open Range, Commnet, McElroy, TowerStream). Of these, one commits to relocate incumbents per FCC rules, but because it doesn't specify how it will protect them until they relocate, this AP has not sufficiently specified interference protection. (Open Range)
- ✓ One AP will operate under 3.65 GHz service rules. (NextWave)
- ✓ One AP will protect incumbents under Parts 22, 27 and 101 rules and will relocate incumbents. (NetfreeUS)

Spectrally Efficient Proposal – M2Z will develop and deploy an innovative beam forming technology to achieve heightened spectral efficiency. M2Z's carefully chosen technologies (TDD, AAS, and OFDMA) will enable the company to operate on unpaired spectrum.

- ✓ One AP is not spectrally efficient because it would only cover rural areas. Where there is a potential for a nationwide license to be awarded to an entity that will serve the entire American public, award of that license to an entity that plans to serve a narrow geographic area will only result in underutilization. This AP also does not provide sufficiently specific information on technical aspects. (Open Range)
- ✓ One AP proposes that, if it fails to construct fully within ten years, rather than losing its license entirely, the band would be disaggregated and recaptured by the FCC. This approach presents too great a risk of fragmentation and further underutilization of the band. This AP also does not provide sufficiently specific information on technical aspects. (Commnet)
- ✓ One AP will use contention-based technology, which is similar to Wi-Fi technology and is currently under development. (NextWave)
- ✓ One AP will use reprogrammed Wi-Fi technology, but it is not clear that such planned reprogramming can be accomplished. (NetfreeUS)
- ✓ Two APs state that they will use TDD, AAS and OFDMA technologies, but there are questions about their ability to carry out these plans due to a lack of specificity in their applications. (McElroy, TowerStream)

Financial qualifications – M2Z has secured considerable funds to begin the buildout of its wireless broadband network and has provided the Commission with details under cover of confidentiality.

- ✓ One AP concedes that it has not secured funding. (Open Range)
- ✓ Five APs offered little or no detail on funding. To the extent they provided detail, their showings are undermined by further analysis of publicly available information on their financial qualifications. (NextWave, Commnet, NetfreeUS, McElroy, TowerStream)

Regulatory Status/Obligations – M2Z's application indicated that it was prepared to commit to obligations that support critical public policy priorities at the FCC—the Communications Assistance for Law Enforcement Act ("CALEA"), E-911 obligations,

consumer proprietary network information (“CPNI”) obligations, and relevant reporting requirements for CMRS licensees. Though the FCC recently changed the regulatory status of wireless broadband, a number of consumer protection and other requirements remain in place. Most APs failed to discuss whether or how they will comply with any particular regulatory status, or sought a status that would minimize their regulatory burdens.

- ✓ Three APs did not specify any regulatory status or discuss how they would meet any regulatory obligations. (McElroy, TowerStream, Open Range)
- ✓ One AP seeks to be regulated under BRS rules. (Commnet)
- ✓ One AP seeks to be regulated under flexible rules that apply in the 3.65 GHz band. (NextWave)
- ✓ One AP requested to be regulated in a manner comparable to M2Z. (NetfreeUS).

Incumbent Relocation – M2Z will abide by Part 27 of the FCC’s rules and relocate incumbents.

- ✓ One AP also will meet the Part 27 standard and relocate incumbents (NetfreeUS)
- ✓ One AP (NextWave) proposes rules from another band that involve technology that is not fully developed and not well-suited to operations in the band.
- ✓ Four APs do not propose compliance with particular interference or relocation rules and do not provide sufficient data regarding the technical aspects of their plans.

3.65 GHz Band More Suitable – On June 7, 2007, the Commission released an order denying petitions for reconsideration and upholding its regulatory scheme for the 3.65 GHz band.⁵ Among other things, the Commission held that, in order to facilitate rapid deployment in the band, it would maintain its previously adopted non-exclusive licensing scheme. It also retained the requirement for equipment in this band to incorporate a contention-based protocol and denied requests for reconsideration of technical rules concerning power limits, out-of-band emissions, and coordination obligations.

- ✓ This action provides the regulatory certainty and the specific results sought by several prospective providers of services in the 3.65 GHz band, including NextWave Broadband, Inc.⁶, Open Range Communications, Inc.,⁷ and TowerStream Corporation.⁸ All of whom filed an AP for the 2155-2175 MHz.

⁵ *Wireless Operations in the 3650-3700 MHz Band, ET Docket No. 04-151; Rules for Wireless Broadband Services in the 3650-3700 MHz Band, WT Docket No. 05-96; Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band, ET Docket No. 02-380*, Memorandum Opinion and Order, FCC 07-99 (rel. June 7, 2007) (“3650 MHz Reconsideration Order”).

⁶ See Letter from Jennifer M. McCarthy, Vice President, Regulatory Affairs for NextWave Broadband, Inc., to Marlene H. Dortch, Secretary, FCC (filed Apr. 11, 2007 in ET Docket No. 04-151) at 1 (providing notice of an ex parte meeting in which NextWave “...encouraged the FCC to affirm [existing] rules by dismissing the pending petitions for reconsideration...”).

⁷ See Letter from Joe D. Edge, Drinker Biddle & Reath, counsel for Open Range Communications, Inc., to Marlene H. Dortch, Secretary, FCC (filed Oct. 11, 2006 in ET Docket No. 04-151) (“Open Range supports the

- ✓ Because the Commission has set aside 50 MHz of spectrum at 3.65 GHz and another 20 MHz of spectrum at 1.9 GHz⁷ for contention-based services, it would be duplicative and inefficient to adopt contention-based methodologies for the 2155-2175 MHz band.
- ✓ NextWave, Open Range, and TowerStream have the regulatory certainty necessary to move forward with their plans for operations in the 3.65 GHz band and their APs for the 2155-2175 MHz band are extraneous and should be dismissed.

Responses to Forbearance Petition

Six parties filed in opposition to M2Z's forbearance petition.⁹ The parties, using the forbearance docket to lodge recycled complaints against M2Z's application, claim that M2Z's use of forbearance is inappropriate or does not meet the test for forbearance. In general, the submissions lack detail. Furthermore, they fall far short of rebutting M2Z's demonstration that the FCC may use Section 10 to forbear from the relevant licensing rules and statutory provisions, because those rules and provisions are: (1) not needed to ensure just and reasonable charges, practices, classifications or regulations; (2) not necessary to protect consumers; and (3) doing so is consistent with the public interest. M2Z noted that many of the parties opposing M2Z's forbearance petition have sought and received forbearance in instances where the public interest benefit is much less clear.

Conclusions

The Petitions to Deny were filed by incumbents to protect their positions in the regulatory process and to maintain their dominance in spectrum ownership. The arguments raised by petitioners demonstrate that their main interest is in blocking new competitive entrants.

The Alternative Proposals each arrived after M2Z's Application had been pending for ten months. None represents a vision of the public interest even approaching M2Z's

current licensing rules of the FCC specifying a 50 MHz wide band with licensed 'lite' registration for service providers").

⁸ See Letter from Donald L. Herman, Jr., Bennet & Bennet, counsel for TowerStream Corporation, to Marlene H. Dortch, Secretary, FCC (filed Mar. 13, 2007 in ET Docket No. 04-151) at 2 (urging the FCC to "quickly affirm its establishment of a nationwide, nonexclusive licensing scheme for the 3.65 GHz band."). TowerStream states that it has tested 3.65 GHz band equipment pursuant to experimental authorizations and asserts that services are ready for deployment. *Id.* TowerStream urges the Commission not to auction the spectrum in the 3.65 GHz band because "should the Commission decide to auction all or a portion of this spectrum band, much-needed services could be delayed up to two years, essentially crippling the hope of real broadband competition in major markets, and the hope for the initial deployment of advanced broadband services in rural portions of the United States." *Id.* See also TowerStream, *TowerStream Applauds FCC Spectrum 3650 MHz Band Decision*, press release (June 8, 2007) ("This unique licensing scheme provides TowerStream additional tools to deploy affordable alternative broadband services across the US.").

⁹ These were filed by CTIA, WCA, AT&T, NetfreeUS, LLC, MetroPCS and TowerStream.

commitments, and none demonstrates the capability or the commitment that M2Z has made to building a fast, free and family-friendly network to spread the benefits of this useful spectrum nationwide.

The Commission should grant M2Z's license application either directly or pursuant to its forbearance authority.

Attachments:

- Attachment A: State and Local Officials in Support of M2Z**
- Attachment B: Local Organizations and Small Businesses in Support of M2Z**
- Attachment C: Summary of M2Z's Responses to Opposition Argument**
- Attachment D: Comparison of M2Z's Proposal with Alternative Proposals**

Attachment A
State and Local Officials in Support of M2Z

- Brian Aldridge, Mississippi State Representative
- Bill Anderson, State Delegate, West Virginia
- Troy Andres, State Delegate, West Virginia
- Tom Apodaca, North Carolina State Senator
- Joe Armstrong, Tennessee State Representative
- Len Augustine, Mayor of Vacaville, California
- Stephen Barrington, Town Commissioner, Wake Forest, North Carolina
- Steve Berry Assistant City Manager, City of Grand Terrace, CA
- Craig P. Blair, State Delegate, West Virginia
- Sidney Bondurant, Mississippi State Representative
- Bruce Bothelho, Mayor of Juneau, Alaska
- Richard Boyce, Mayor of Belmont North Carolina
- Tony Braswell Commissioner, Johnston County, North Carolina
- Phil Breitenbucher, former Parks Commissioner, Corona, California
- Thomas McGee, Massachusetts State Senator
- Lesil McGuire, Alaska State Senator
- Leonard McNeil Council Member, San Pablo, California
- Sharon McPhail, General Counsel, Detroit Michigan
- Jonathan Miller State Delegate, West Virginia
- Parker Mills Commissioner, Union County, North Carolina
- Richard Montgomery, Tennessee State Representative
- John Moore, Mississippi State Representative
- Tony Morejon, Hispanic Affairs Liaison of Hillsborough County, Florida
- John O'Brien, Jr. Register of Deeds, Essex County Massachusetts
- Stephen Palazzo, Mississippi State Representative
- Robert B. Partin, Mayor of Scotland Neck, North Carolina
- Louis M. Pate, Jr., North Carolina State Representative
- Jean Preston, North Carolina State Representative

- Cecil Brown, Mississippi State Representative
- Tim Burchett, Tennessee State Senator
- Credell Calhoun, Mississippi State Representative
- Genoveva Garcia Calloway, Council Member, San Pablo, California
- Videt Carmichael, Mississippi State Senator
- Adolfo Carrion, Bronx Borough President
- Gary Chism, Mississippi State Representative
- Bryant Clark, Mississippi State Representative
- Alyce G. Clarke, Mississippi State Representative
- Mary Coleman, Mississippi State Representative
- Daryl E. Cowles, State Delegate, West Virginia
- Ray Craft, Council Member, Greenville, North Carolina
- Robert S. Creedon, Jr. Massachusetts State Senator
- Maggie Crotty, Illinois State Representative
- Jason Crotwell, Chief of Police, Raymond, Mississippi
- Mark P. Cullinan, Town Administrator, Nahant Massachusetts
- Mickey Price Commissioner, Gaston County North Carolina
- Jim Quinn, Trustee of Alsip Village, Illinois
- Scott Randolph, Florida State Representative
- Dannie Reed, Mississippi State Representative
- Clint Rotenberry, Mississippi State Representative
- Ruth Rowan, State Delegate, West Virginia
- Brenda Salas, Mayor of Banning, California
- Merrill Sanford, Deputy Mayor of Juneau, Alaska
- Clayton Smith, Mississippi State Representative
- Kelli Sobonya, State Delegate, West Virginia
- Jeffrey Tansill, State Delegate, West Virginia
- John Thuss Commissioner, Caldwell County, North Carolina
- John Torbett Commissioner, Gaston County North Carolina
- Isla Tullos, Mayor of Raymond Mississippi
- Jessica Upshaw, Mississippi State Representative
- John Vasapolli, Council Member, Saugus, Massachusetts

- Bettye Davis, Alaska State Senator
- Lee Jarrell Davis, Mississippi State Representative
- Bob DeLeo, Massachusetts State Representative
- Paul Donato, Massachusetts State Representative
- Walter E. Duke, State Delegate, West Virginia
- Susan Duplin, City Clerk, Town of Winthrop, MA
- Allen V. Evans, State Delegate, West Virginia
- Stephen Faia, Councilman, Everett Massachusetts
- Erik Flemming, Mississippi State Representative
- Richard Foster, Majority Whip, Alaska House of Representatives
- Paul D. Fraim, Mayor of Norfolk, Virginia
- Hillman Frazier, Mississippi State Senator
- Jerome Garza, First Vice President, Dallas Independent School District
- Herb Greene Commissioner, Caldwell County, North Carolina
- Tim Greimel Commissioner, Oakland County, Michigan
- Jim Hackworth, Tennessee State Representative
- Peter Vickery, Massachusetts Governor's Councilor
- Shaun Walley, Mississippi State Representative
- Johnnie Walls, Mississippi State Senator
- JoAnn Watson, Council Member, Detroit, Michigan
- James Watson, Councilman, Gastonia, North Carolina
- Linda Whittington, Mississippi State Representative
- Ronnie S. Williams, Mayor of Garner, North Carolina
- John Mark Windle, Tennessee State Representative
- Vernon Archer, Mayor of Riverdale Park, Maryland
- John Bean, Mayor of Barton, Maryland
- Mike Boland, Illinois State Representative
- Michael Bond, Illinois State Senator
- Lon Burnam, Texas State Representative
- Madeline Cain, Deputy Director, Cuyahoga County, Ohio Department of Development
- Mitch B. Carmichael, State Delegate, West Virginia
- Phyllis Cleveland, Councilwoman, Ward 5, City of Cleveland, Ohio
- John Coburn, Mayor of Lonaconing, Maryland

- Bill Hamilton, State Delegate, West Virginia
- John Hanlon, Mayor of Everett Massachusetts
- Alice Varnado, Harden Mississippi State Senator
- Neil Harrington, Town Manager, Salisbury Massachusetts
- Mike Harris, Tennessee State Representative
- Jack Hart, Massachusetts State Senator
- David Hawk, Tennessee State Representative
- Roy Herron, Tennessee State Senator
- Faye Higgins, Chair, Caldwell County Commissioners, North Carolina
- Donald W. Hill, Mayor Pro Tem of Dallas, Texas
- John Horhn, Mississippi State Senator
- Joey Hudson, Mississippi State Representative
- Gary Jackson, Mississippi State Senator
- Michael Janus, Mississippi State Representative
- Wanda Jennings, Mississippi State Representative
- Ron Jones, Director, Tennessee State Regulatory Authority
- Ronald Collins, Commissioner, Berkeley County, West Virginia
- Rodney Cox, Chief of Police, City of Denton, Maryland
- Arnold Downing, Chief of Police, Berlin Police Department, Maryland
- James M. Dubelko, Director of Law, City of North Olmsted, Ohio
- J.D. Ervin, Chief of Police, Pocomoke City, Maryland
- Andy Hafen, City Councilman, Ward 2 Henderson ,Nevada
- William Haine, Illinois State Senator,
- Terence Hanley, Chair of Bel Air Town Commissioners Bel Air, Maryland
- Garry R. Herbert, Lieutenant Governor of Utah
- Gary Hooser, Hawaii State Senator
- Steven Horsford, Nevada State Senator
- B.R. Huggins Mayor, Town of Mount Olive North Carolina
- Robert Jones, Sheriff, Somerset County, Maryland
- Peter Lawson Jones, Vice President, Board of Commissioners Cuyahoga County, Ohio
- Kevin Joyce, Illinois State Representative
- Scott Keller, Captain, Police Department Princess Anne, Maryland
- Dean Kirby, Mississippi State Senator

- Marjorie Ann Joy Trustee of Oak Lawn Village, Illinois
- Maddie Kelly, Director of Oak Lawn Village, Illinois
- Mike Kernell, Tennessee State Representative
- Bill Kerton, Tennessee State Senator
- Tommy Kilby, Tennessee State Senator
- Lynn Lail, Commissioner, Catawba County, North Carolina
- David R. Lewis, North Carolina State Representative
- John Litz, Tennessee State Representative
- Mike Lott, Mississippi State Representative
- Joseph Lyons, Illinois State Representative
- Mark Maddox, Tennessee State Representative
- Mark Mahoney Alderman, Springfield, Illinois
- Roberto Maldonado, Commissioner, Cooke County Illinois
- Edward Maloney, Illinois State Representative
- Dan Maniff, Chief Inspector Office of Fire Prevention, Revere, Massachusetts
- Michael Lewis, Sheriff, Wicomico County, Maryland
- Thomas Martin, Mayor of Maywood, California
- Luis Natividad, Councilman, National City, California
- Mike Noland, Illinois State Senator
- Marcus R. Oshiro, Hawaii State Representative
- Eugene Parker, Chief, Police Department, Snow Hill, Maryland
- Thomas Mike Porter, Delegate, West Virginia
- Kwame Raoul, Illinois State Senator
- Steven Ross, City Councilman, Las Vegas, Nevada
- Calvin Say, Hawaii State Representative
- Robert Schadler, Delegate, West Virginia
- Tick Segerblom, Nevada State Assemblyman
- Ira Silverstein, Illinois State Senator
- S. Fred Simmons, Mayor of Aberdeen, Maryland
- Thomas R. Swaim, Commissioner Morgan County, West Virginia
- Michael Tabor, Chief of Police, Town of Crisfield, Maryland
- Bill Thomas, Alaska State Legislator
- Nina Turner Councilwoman, City of Cleveland, Ohio

- Chris Mann, Director of the San Geronimo Pass, California Water Agency
- John Mayo, Mississippi State Representative
- Joe McCord, Tennessee State Representative
- Lou Viverito, Illinois State Senator
- Joe Wells, Treasurer, Dallas County, Texas
- Kyle T. Yamashita, Hawaii State Representative
- Karen Yarbrough, Illinois State Representative

Attachment B
Local Organizations and Small Businesses in Support of M2Z

- Alliance, AFT of Dallas, Texas
- Amyre's Ink of Southfield, Michigan
- Broma Information Technology of Cleveland, Ohio
- Krutchie Entertainment of Los Angeles, California
- Nolan and Associates of Andersonville, Tennessee
- SB Health and Beauty Spa of Tampa, Florida
- Florida Public Interest Research Group of Tallahassee, Florida
- Stardust Café of Madeira Beach, Florida
- Valley Seamless Gutters of Hedgesville, West Virginia
- Carol Hirschburg Consulting of Owings Mills, Maryland
- Nevada Public Education Foundation of Las Vegas, Nevada
- Hope Communications of Silver Spring, Maryland
- Lotus TV of Tampa, Florida
- Shomon Corporation of Chicago, Illinois
- Miller's Mowing and Landscaping of Bethania, North Carolina
- Rowland Unified School District of Rowland Heights, California
- West Contra Costa County Latino Democratic Club of Richmond, California
- Montgomery County Library of Rockville, Maryland
- Great Inflates, LLC of Charles Town, West Virginia
- Billie Meador, Financial Councilor of Plano, Texas
- MedFaxx of Wake Forest, North Carolina
- Premiere Center for Cosmetic Surgery of Tampa, FL
- Environmental Health Programs, American Lung Association of Metropolitan Chicago, Illinois
- Carol Berger, Esquire of Dallas, Texas
- Conservation & Wildlife Alliance of Sacramento, California
- Abstract Business Advisors of Ridgeland, Mississippi
- Adelman Appraisals of Sherman Oaks, California
- Demco Group of Clayton, North Carolina
- College of Public Health, University of South Florida of Tampa, Florida
- Fako & Associates of Lemont, Illinois

- San Diego Dental Society of San Diego, California
- Western Masters Karate of Martinsburg, West Virginia
- Apposite Technologies of Beverly Hills, California
- Central Florida AFL-CIO of Orlando, Florida
- DP Clinical of Rockville, Maryland
- Beam Pharmacies, Inc. of Cherryville, North Carolina
- Center Joint Unified School District of Antelope, California
- Stewart Men's Wear of Martinsburg, West Virginia
- YTB Travel Network of Tampa, Florida
- Alpine Union School District of Alpine, California
- AlphaGenics of Rockville, Maryland
- Dallas Central Ministries of Dallas, Texas
- Maxine Goodman Levin College of Urban Affairs, Cleveland State University of Cleveland, Ohio
- HKS Consultants of Cleveland, Ohio
- J. Scott, Chase, Attorney at Law of Dallas, Texas
- Schokolad Chocolate Factory of Tampa, Florida
- James H. Richards, Attorney at Law of Chicago, Illinois
- Case Western Reserve University School of Law of Cleveland, Ohio
- David Lloyd Photography of Santa Maria, California
- Debbie Horn, Realtor of Pfafftown, North Carolina
- Central Florida Jobs with Justice of Orlando, Florida
- Greentree Funding of Grand Rapids, Michigan
- El Paso County Democratic Party of El Paso, Texas
- Young and Company of Brooklandville, Maryland
- TravelDocs, Ltd of Fallon, Nevada
- TV Vision of Tampa, Florida
- New River Convention & Visitors Bureau of Oak Hill, West Virginia
- Daniller Consulting of San Francisco, California
- K2B Inc of Marblehead, Maryland
- Schiff, Gorman and Krkljes of Chicago, IL
- Florida Civil Rights Association of Orlando, Florida
- Maryland Association of Elementary School Principals of Havre de Grace, Maryland
- Jones Shipley Xpress of Hagerstown, Maryland
- Harnett County GOP of Bunnlevel, North Carolina

- LA-MS Hospice & Palliative Care Organization of New Orleans, Louisiana
- Hillsborough Community College of Tampa, Florida
- Dallas School Board of Dallas, Texas
- Sierra Community College District of Rocklin, California
- Grossmont Union High School District of La Mesa, California
- Max IT, Inc. of Jackson, Mississippi
- Dynamic Motions of Tampa, Florida
- The Project Group of Columbus, Ohio
- Porterfield Properties, Inc. of Bunker Hill, West Virginia
- Governmental & Political Associates Consortium of Jackson, Mississippi
- Employment & Family Services, Cuyahoga County of Cleveland, Ohio
- Foreman Office Products of Dallas, Texas
- Polish Women's Alliance of America, Group 49 of Cleveland, Ohio
- Apex Language Center of Tampa, Florida
- Proactive Media of Studio City, California
- NC Federation of Young Republicans of Moorville, North Carolina
- Showcase Enterprises, Inc. of Wakefield, Massachusetts
- Church and Society Committee, Northaven United Methodist Church of Dallas, Texas
- Studio db of Oakland, California
- Stewart-Buchanan Interiors of Santa Barbara, California
- Rutherford County Republican Party of Lake Lure, North Carolina
- GraphicMark, Inc. of Alsip, Illinois
- Boustani IT Consulting, LLC of South Euclid, Ohio
- Natural Resources Corporation of Long Beach, California
- Di Pesa & Co. of Quincy, Massachusetts
- University I.P. of Tampa, Florida
- American Subcontractors Association of Jackson, Mississippi
- Joseph Haas Insurance Agency of Las Vegas, Nevada
- The United Neighborhood Organization of Chicago, Illinois
- Metropolitan Water Reclamation District of the Greater Chicago Area of Chicago, Illinois
- Smile Designs of Inwood, West Virginia
- Medical Insurance Services, Inc. of Raleigh, North Carolina
- Century Village Condominium Association, of Boca Raton, Florida
- The Dealy Group of Del Mar, California
- Florida Community Health Action Information Network of Plantation, Florida

- Mississippi Hotel & Lodging Association of Biloxi, Mississippi
- Richland College of Dallas, Texas
- Northeast Ohio Nurse Practitioners of Twinsburg, Ohio
- Intercultural Hispano-Americano of Tampa, Florida
- Wake Forest Chamber of Commerce of Wake Forest, North Carolina
- College of Urban Affairs, Cleveland State University of Cleveland, Ohio
- Injury Prevention Center of Greater Dallas of Dallas, Texas
- Maddrey, Etringer & Smith of Eden, North Carolina
- Sangamon County Democratic Party of Chatham, Illinois
- East San Gabriel Valley Regional Occupational Program and Technical Center of West Covina, California
- Dee Vending of Troy, Michigan
- Antelope Valley Chambers of Commerce of Lancaster, California
- Caminos Pathways Learning Center of San Francisco, California
- North Texas Asian American Forum of Dallas, Texas
- Advanced Technology Alliance of Chicago, Illinois
- Lynnfield Republican Town Committee of Lynnfield, Massachusetts
- San Francisco School Alliance of San Francisco, California
- Environment Florida of Tallahassee, Florida
- Mojo Communications of Las Vegas, Nevada
- Maryville College of Maryville, Tennessee
- Frye Orchard of Gerrardstown, West Virginia
- Morrissey Public Affairs of Chicago, Illinois
- The Villas at Newport Landing of Tampa, Florida
- Michael Giordano, Attorney at Law of Grand Rapids Michigan
- Nome Chamber of Commerce of Nome, Alaska
- The Growth Association of Southwestern Illinois of Godfrey, Illinois
- Fayette County Chamber of Commerce of Oak Hill, West Virginia
- VerbFactory of Oakland, California
- The Richmond Company, Inc of Wilmington, Massachusetts
- Federal Covers & Textiless, Inc. of Kenly, North Carolina
- Govtech Solutions of Akron, Ohio
- Top Supplies, Inc of Highpoint, North Carolina

- Life Sciences Conference Group, LLC of Bethesda, Maryland
- Mississippi State Capitol Medical RN of Jackson, Mississippi
- Bullpen Creative Advertising of Sherman Oaks, California
- Horizon Shine of Santa Monica, California
- Spero Smith Investment Advisors of Cleveland, Ohio
- RST Pathways of Lakewood, Ohio
- TaxpayersAdvocate.org of San Diego, California
- Catawba County Economic Development Corporation of Hickory, North Carolina
- Raynard Associates of Middleton, Massachusetts
- The StandDown Texas Project of Austin, Texas
- American Zabin International of Las Vegas, Nevada
- Training Solutions of Akron, Ohio
- Cleveland Public Library of Cleveland, Ohio
- California Taxpayer Protection Committee of Elverta, California
- The Farmworker Association of Florida of Apopka, Florida
- Golden Dragon Charters of Kailua Kona, Hawaii
- Bishop Street Exchange Club of Honolulu, Hawaii
- Cornerstone Company of Las Vegas, Nevada
- Electronic Knowledge Interchange of Chicago, Illinois
- Boulder City Chamber of Commerce of Boulder City, Nevada
- Banc First Mortgage Company of Palos Heights, Illinois
- Fathom Interactive Solutions of Cleveland, Ohio
- Sean M. Mulrone, Attorney at Law of Chicago, Illinois
- Unified School District of West Covina, California
- Generation Three Logistics of Las Vegas, Nevada
- Antelope Valley Hispanic Chamber of Commerce of Palmdale, California
- Goolsby Law Firm, PLLC of Wilmington, North Carolina
- Care Compensation Specialists of Detroit, Michigan
- Widener Writing & Consulting of Frederick, Maryland
- Consumer Federation of the Southeast of Tallahassee, Florida
- Cuyahoga County Community Mental Health Board of Cleveland, Ohio
- El Paso County Democratic Party of Austin, Texas
- MAN-n-BAG of Fairfax, Virginia

ATTACHMENT C
M2Z HAS AUTHORITATIVELY RESPONDED TO EVERY OPPONENT’S ARGUMENT
IN THE RECORD OF WT DOCKETS 07-16 AND 07-30

ISSUE	POSITION OF OPPONENTS	M2Z’S RESPONSE	REFERENCE
Whether the Statute Requires Competitive Bidding	Section 309(j)(1) of the Act requires that the Commission auction the 2155-2175 MHz band.	The Opponents’ argument is based on a fundamental misreading of the Act. Section 309(j)(1), by its own terms, is triggered only “if” the guidance in Section 309(j)(6)(E) is followed. Section 309(j)(6)(E) requires the Commission to avoid mutual exclusivity in the public interest.	<i>See</i> M2Z Application at 34-40; M2Z Forbearance Petition at 41-45; M2Z Opposition at 31-37; M2Z Response at 6-12
Whether Competitive Bidding Serves the Public Interest	An auction is the only way the Commission can meet its public interest obligations.	The Commission has ample legal authority to grant M2Z’s Application in the public interest without conducting an auction. The Commission previously has authorized services without the use of competitive bidding when the public interest so demanded. M2Z’s public interest showing meets or exceeds the Section 309(j)(6)(E) standard as applied by the Commission in these prior cases. The Commission would need to find that an auction would provide greater public interest benefits than grant of M2Z’s Application before deciding to use competitive bidding to assign the license that M2Z requests.	<i>See</i> M2Z Application at 34-40; M2Z Opposition at 41-47 & 54-60; M2Z Forbearance Petition at 3-14 & 41-45; M2Z Response at 13-17
Whether Competitive Bidding Ensures Rapid Deployment of Service	An auction is the only way to ensure timely assignment of licenses and rapid deployment of new services.	M2Z has committed to rapid service deployment with specific and enforceable construction benchmarks. Thus, grant of M2Z’s Application will provide certainty that the public interest benefits of NBRS will materialize within a short time frame. Auctions often result in nothing more than the warehousing of the valuable spectrum resource by incumbents.	<i>See</i> M2Z Opposition at 47-53; Wilkie Paper “Auctions Are Not a Panacea”; M2Z Forbearance Petition at 45

ISSUE	POSITION OF OPPONENTS	M2Z'S RESPONSE	REFERENCE
Whether M2Z's Proposal Represents the Highest and Best Use of Spectrum	Unless the FCC conducts a proceeding on all possible uses of the spectrum, a comparative evaluation cannot be made of the best use of the spectrum.	The Commission reallocated the 2155-2175 MHz for advanced wireless services band several years ago. M2Z has proposed the highest and best use of the spectrum based on the substantial record of these proceedings. None of the Alternative Proposals reach the high public interest bar established by M2Z's Application.	<i>See</i> M2Z Application at 15-16; M2Z Motion to Dismiss at 11-13 & 18-49; M2Z Opposition at 10-13; M2Z Reply Comments at 17-23
Whether M2Z Will Gain an Anticompetitive Windfall	License grant will afford an anticompetitive windfall to M2Z and treat similarly-situated entities dissimilarly to the detriment of competition and the market.	There is no potential for a windfall or unjust enrichment of M2Z, as its spectrum usage fee payments will continue throughout the license term. This has the potential to yield many times more than what might be paid via a one-time auction bid. Moreover, there is no windfall when the Commission determines the highest and best use of spectrum and assigns licenses in fulfillment of its public interest duties.	<i>See</i> M2Z Opposition at 73-74; M2Z Reply Comments at n.24
Whether the Value of the Spectrum Will Be Recovered	The value of the license may not be recovered through the five percent fee and can only be recouped through a spectrum auction.	The U.S. Treasury is likely to recover more from M2Z than what has been garnered from any previous unpaired spectrum auction. M2Z's voluntary and direct five percent annual payments to the U.S. Treasury will increase as M2Z's premium service subscriber base grows. These royalty payments could generate anywhere from \$35 million to more than \$536 million from 2008 onwards as M2Z's premium service subscriber base grows. Auctions are not a goal in and of themselves, and the Commission is prohibited from considering potential auction revenues when assigning spectrum rights.	<i>See</i> M2Z Application at 26 & 31-32; M2Z Forbearance Petition at 46-49; M2Z Opposition at 61-69 & 103-06; Wilkie Study on Consumer Welfare Impact at 19-20; M2Z Reply Comments at 26-27

ISSUE	POSITION OF OPPONENTS	M2Z'S RESPONSE	REFERENCE
Whether M2Z Will Be Unjustly Enriched	M2Z wants free spectrum and may be unjustly enriched if its license is granted.	M2Z will compensate U.S. taxpayers for the value of the spectrum through voluntary usage fees, in addition to its extensive public interest commitments. Moreover, raising funds for the U.S. Treasury is not a relevant consideration for the Commission in granting spectrum licenses.	<i>See</i> M2Z Application at 26 & 31-32; M2Z Opposition at 64-69
Whether M2Z's Service Will Be Government Subsidized	M2Z is a for-profit venture that does not warrant a government subsidy which would distort competition.	M2Z has not asked the Commission to finance its business, just as the Commission does not subsidize the hundreds of thousands of licenses it grants every year without conducting an auction. Indeed, many of the opponents have never paid for their current spectrum holding. Moreover, grant of M2Z's Application will facilitate new entry into the broadband market and increase competition, not limit it.	<i>See</i> M2Z Opposition at 102 & 109-11
Whether Mutual Exclusivity Exists	The spectrum sought by M2Z must be auctioned due to the existence of mutually exclusive applications. As such, M2Z's forbearance petition has been rendered moot.	This is another misreading of the Act by the Opponents. The obligation under Section 309(j) to conduct an auction arises only if mutually exclusive applications are accepted for filing, and to date only M2Z's Application has been accepted for filing. None of the Alternative Proposals have been accepted for filing. As a result, M2Z's forbearance petition cannot be moot.	<i>See</i> M2Z Motion to Dismiss at 4-5; M2Z Reply Comments at 13-15; M2Z Response at 6-12
Whether M2Z Wants a Pioneer's Preference	M2Z is trying to reinvigorate the rejected pioneer's preference program.	The pioneer's preference program is irrelevant to M2Z's Application. M2Z does not seek preferential treatment for its service but fair consideration of the public interest and consumer welfare benefits of its application when granted.	<i>See</i> M2Z Opposition at 69-72

ISSUE	POSITION OF OPPONENTS	M2Z'S RESPONSE	REFERENCE
Whether M2Z's Usage Fee Amounts to Installment Payments	M2Z's five percent payment resembles the former installment payment program.	There is no rational link between the former installment payment program and the spectrum usage fee proposed by M2Z. M2Z does not seek to enter into a creditor-debtor relationship with the government, and the Commission bears no risk under M2Z's proposal because M2Z's license is conditioned on meeting its public interest commitments.	<i>See</i> M2Z Opposition at 72-75
Whether the Anti-Deficiency Act Would Be Violated	If the Commission grants M2Z's Application on the condition that M2Z perform the public interest obligations proposed in the Application, it would be entering into a contract with M2Z in violation of the Anti-Deficiency Act (ADA).	This argument previously has been rejected by the Commission and should be here on two grounds: (1) license grants, even when subject to conditions, do not constitute contracts under the ADA; and (2) the Commission clearly has broad authority and discretion in how it may assign licenses.	<i>See</i> M2Z Opposition at 108-09
Whether the Miscellaneous Receipts Act Would Be Violated	Spectrum usage fee would violate the Miscellaneous Receipts Act by inducing the Commission to trade the value of the spectrum for promises by M2Z to perform certain acts or services.	This argument previously has been rejected by the Commission and is based on the false premise that the Commission has no discretion to assign the license requested by M2Z without competitive bidding. Section 309(j)(6)(E) expressly affords the Commission such discretion.	<i>See</i> M2Z Opposition at 106-07
Whether Usage Fee Payments Would Violate Other Laws or Commission Authority	The Commission is without authority to impose the spectrum usage fee, which therefore would constitute an illegal or unenforceable tax.	M2Z has committed to making voluntary payments to the U.S. Treasury, meaning that the Commission would not impose a tax of any kind. M2Z's payments would be made to the U.S. Treasury, meaning that the Commission would not collect the revenue to be paid pursuant to the voluntary spectrum usage fee proposed in the Application.	M2Z Application at 32-35; M2Z Opposition at 104-106; M2Z Response at 34-35

ISSUE	POSITION OF OPPONENTS	M2Z'S RESPONSE	REFERENCE
Whether the Spectrum Is Fallow	There remain a significant number of incumbent users of the 2155-2175 MHz band.	All incumbent users of the 2155-2175 MHz band have been ordered by the Commission to relocate to other bands as soon as practicable. Grant of M2Z's Application will resolve the lengthy search for a beneficial use for the band.	<i>See</i> M2Z Application at 15-16; M2Z Opposition at 84-87
Whether Co-Channel and Adjacent Channel Licensees Will Be Protected	Questions have been raised as to how adjacent and co-channel incumbent licensees will be protected from interference.	M2Z will work diligently during the construction and operational phases to prevent harmful co-channel interference to BRS and FS systems using several proven successful engineering techniques. In addition, M2Z will be able to protect adjacent AWS licensees using existing technologies.	<i>See</i> M2Z Application at 19-21; M2Z Forbearance Petition at 41; M2Z Opposition at 88-98; M2Z Reply Comments at 27-29; M2Z Response at 22-26
Whether Co-Channel Incumbents Will Be Relocated	M2Z may not have the financial backing and resources to reimburse fixed microwave service relocation.	M2Z has committed to satisfying the Commission's requirements for relocating incumbents consistent with the <i>AWS Ninth Report and Order</i> and has substantiated that the level of its financial backing is sufficient to meet those requirements.	<i>See</i> M2Z Application at 19-21; M2Z Forbearance Petition at 38-41; M2Z Opposition at 88-92; M2Z Request for Confidential Treatment
Whether a Rulemaking Is Needed	The FCC should not grant a license application until it adopts service rules for the band in a rulemaking proceeding.	M2Z's proposal was very specific, including rules addressing power level, protection and relocation of incumbents, and many other commitments that will appear as conditions on the face of M2Z's license. All of these matters now have been placed on Public Notice for comment and a substantial record has been developed. The Commission has no obligation to conduct a time-consuming rulemaking inquiry and has discretion to license the 2155-2175 MHz band through adjudication under Section 309(j)(6)(E).	<i>See</i> M2Z Application at 40-43; M2Z Opposition at 75-80; M2Z Forbearance Petition at 3-14
Whether Service Rules Are Needed	Service rules for the 2155-2175 MHz band are needed before M2Z's Application can be granted.	M2Z's Application is a complete proposal including applicable service rules consistent with those adopted for Part 27 services. Adoption of service rules through a rulemaking would result in needless delay.	<i>See</i> M2Z Application at 13-21; M2Z Opposition at 75-84 & 98-99

ISSUE	POSITION OF OPPONENTS	M2Z'S RESPONSE	REFERENCE
Whether There Is a Sufficient Record	The current record is insufficient to establish the record needed to grant M2Z's Application.	The placement of M2Z's Application on Public Notice and the full record developed in response to the multiple Public Notices in these proceedings demonstrate that the Commission has satisfied the APA's notice and comment requirement. Over 1,100 comments have been filed in these proceedings; thus, the record is more than adequate for the Commission to act.	<i>See</i> M2Z Opposition at 75-80; M2Z Reply Comments at 30-31
Whether M2Z Is Eligible for Section 10 Relief	M2Z is not eligible to seek forbearance relief under Section 10 of the Act.	Section 10 relief is available to carriers or classes of carriers, and M2Z is both a carrier and among a class of carriers entitled to Section 10 relief.	<i>See</i> M2Z Forbearance Petition at n.3; M2Z Reply Comments at n.13
Whether Forbearance Robs FCC of Authority to Grant Application	If forbearance petition is granted, the FCC would not have the authority to grant the application.	M2Z seeks forbearance from the provisions of the Act and rules only to the extent they impede the grant of its Application. Under the express terms of the applicable statutory and rule provisions, if forbearance is granted, the FCC "shall" or "will" grant M2Z's Application.	<i>See</i> M2Z Forbearance Petition at 18-19 & 35-38; M2Z Reply Comments at 5-7
Whether Forbearance Robs FCC of Opportunity to Make a Public Interest Determination	The forbearance process cannot take the place of the FCC's obligation to grant licenses in the public interest.	To the contrary, Section 10's forbearance standard requires the FCC to determine whether the forbearance M2Z seeks is in the public interest, and M2Z has amply demonstrated that forbearance in this instance is in the public interest.	<i>See</i> M2Z Forbearance Petition at 24-33; M2Z Opposition at 27-31; M2Z Reply Comments at 5-7
Whether M2Z Is Eligible for Section 7 Relief	M2Z's Application does not qualify for Section 7 treatment because M2Z has not proposed a new service or a new technology.	M2Z has proposed to provide NBRS—the first nationwide wireless broadband service using spectrally efficient advanced technologies made available to consumers without recurring charges and with other distinctive features such as filtering of obscene and indecent content.	<i>See</i> M2Z Application at 13-15 & 22-26; M2Z Forbearance Petition at 16-18; M2Z Opposition at 23-27; M2Z Response at 17-21

ISSUE	POSITION OF OPPONENTS	M2Z'S RESPONSE	REFERENCE
Whether the Purposes of Section 7 Would Be Served	Section 7 is a broad policy statement, rather than an affirmative obligation of the Commission.	The plain language and legislative history of Section 7, and Commission precedent, confirm that this statutory provision was intended to create an obligation of the Commission to act on new service or technology proposals within one year and place the burden on opponents to demonstrate that M2Z's proposal is inconsistent with the public interest.	<i>See</i> M2Z Forbearance Petition at 16-18; M2Z Opposition at 23-27; M2Z Motion to Dismiss at 15-18; M2Z Response at 17-21
Whether There Is a Need for M2Z's Service	High speed broadband services, including wireless broadband, are widely available throughout the country and provided by a number of competitors.	M2Z's service will meet the Commission's stated goal that "[a]ll Americans should have affordable access to robust and reliable broadband products and services." Unlike the great majority of existing broadband services, NBRS will be free and will offer other features such as filtering of obscene and indecent content. In addition, NBRS provides access to the Internet without requiring an underlying DSL, cable, T-1, or fiber connection. The benefits and need for M2Z's service have been lauded by hundreds of commenters in these proceedings.	<i>See</i> M2Z Application at 8-11; M2Z Reply Comments at 24-25; M2Z Opposition at nn.7-14; M2Z Motion to Dismiss at nn.17-24
Whether M2Z's Service Is Free	M2Z's proposed service is not really free because users must purchase \$250 CPE.	Every service requires the purchase of CPE. M2Z's cost estimate is conservative and CPE cost will decline over time. Amortized over one year, the CPE cost is just over \$20 per month for only 12 months for a free service.	<i>See</i> M2Z Application at 21-22; M2Z Reply Comments at 24-25
Whether M2Z's Service Is Fast Enough	Mobile broadband services already offer data rates in excess of those M2Z proposes to offer.	M2Z's Application proposes only the minimum data rates, not a ceiling, and these rates represent a six-fold increase in speed over dial-up service. M2Z's service will be scalable and adaptable over time to increase speeds in the future.	<i>See</i> M2Z Opposition at 99-100; M2Z Reply at 33-34

ISSUE	POSITION OF OPPONENTS	M2Z'S RESPONSE	REFERENCE
Whether M2Z's Buildout Schedule Is Enforceable	M2Z's buildout commitments do not ensure the rapid deployment of service.	M2Z's buildout schedule is far more aggressive than the "substantial service" obligation other wireless licensees are subject to (and have sought waivers of), and ensures 95% coverage within 10 years of service commencement under the express conditions of the license.	<i>See</i> M2Z Application at 23; M2Z Opposition at 101-02; M2Z Reply Comments at 25-26
Whether M2Z Is Financially Qualified	M2Z has not adequately demonstrated its financial qualifications to hold a license and to construct and operate a nationwide network that could cost as much as \$18 billion to build.	M2Z has substantiated its financial qualifications through the confidential submission of a letter demonstrating M2Z's ability to obtain financing from its financial backers.	<i>See</i> M2Z Application at 6-7 and Appendix 1; M2Z Opposition at 111-14; M2Z Motion to Dismiss at 45-46; M2Z Request for Confidential Treatment
Whether M2Z Is Technically and Otherwise Qualified	M2Z has not demonstrated that it is qualified to build a nationwide network.	M2Z's founders, managers, and engineers have extensive background and experience in building and operating wireless and IP-based networks.	<i>See</i> M2Z Application at 6-7 and Appendix 1; M2Z Opposition at 111-14; M2Z Motion to Dismiss at 45-46
Whether Public Safety Will Have Uninterrupted Access	Public safety entities may not have uninterrupted access to M2Z's network.	M2Z pledged in its Application to provide any and all federal, state, county, or municipal public safety organization(s) access to its free, nationwide service without limit as to the number of devices that may use the network. M2Z's network is an opt-in model and M2Z has committed to work with the public safety community to define use criteria and features like preemption in order to make its network a valuable component of an IP-enabled "network of networks" for public safety.	<i>See</i> M2Z Opposition at 16-18; M2Z Application at 24-26; M2Z Reply Comments at 29-30; M2Z White Paper "Communicating Effectively When Disaster Strikes"

ISSUE	POSITION OF OPPONENTS	M2Z'S RESPONSE	REFERENCE
Whether the Universal Service Fund Will Be Affected	Grant of M2Z's Application would not result in the type or the magnitude of USF savings that M2Z claims.	M2Z's estimates regarding the potential USF savings associated with deployment of the NBRs are careful and conservative projections based on the best available information. Opponents minimize the likely growth in the fund necessary to pay for broadband deployment in the absence of M2Z's service. Finally, M2Z will also contribute to USF due to M2Z's commitment to pay into the fund.	<i>See</i> M2Z Opposition at 18-23; M2Z Application at 3, 29-31 & Appendix 5, p.24; M2Z Motion to Dismiss at 26-27
Whether M2Z's Service Will Spur Broadband Deployment	M2Z's network would have a negative impact on the deployment of broadband service in rural areas by discouraging other potential providers from deploying their networks.	To the contrary, grant of M2Z's Application will advance rural network deployment and relieve pressure to expand USF expenditures to subsidize such deployment in high-cost areas, saving Americans \$20 billion in USF payments over the long term.	<i>See</i> M2Z Opposition at 18-23; M2Z Application at 29-31 & Appendix 5, p.24; M2Z Motion to Dismiss at 26-27; M2Z Response at 31-32
Whether There Are Consumer Welfare and Economic Benefits	Not addressed	By conservative estimates, M2Z's entry in the market for broadband and telecommunications service will generate for U.S. consumers a new present value ranging from more than \$18 billion to more than \$34 billion.	<i>See</i> M2Z Application at 26-28; M2Z Opposition at 15-16; M2Z Motion to Dismiss at 35-38; Wilkie Study on Consumer Welfare Impact at 3; Liopiros Study on Value of M2Z Public Interest Commitments at 11-29
Whether M2Z's Entry Will Increase Competition	Not addressed	M2Z's entry into the broadband market will increase competition and drive incumbents to present more innovative offerings to the public.	<i>See</i> M2Z Application at 28-29; M2Z Forbearance Petition at 24-31
Whether M2Z's Service Will Help Small Businesses	Not addressed	For small and disadvantaged businesses, the cost of broadband access remains one of the major obstacles to participating in e-commerce. M2Z's free, nationwide broadband Internet access service would extend the potential of e-commerce to all businesses.	<i>See</i> MMTC Comments at 10-11; M2Z Application at 37

ISSUE	POSITION OF OPPONENTS	M2Z'S RESPONSE	REFERENCE
Whether M2Z Will Increase Ownership Diversity	Not addressed	The Commission has a statutory mandate to promote ownership of communications outlets by minorities, women, and small businesses. M2Z has one of the most diverse ownership and management teams of any communications business.	<i>See</i> MMTC Comments at 4-6; M2Z Application at 6-7 and Appendix 1
Whether M2Z's Service Will Increase Content Diversity	Not addressed	The Internet provides a unique opportunity to expand media diversity by allowing average citizens to take the reins. The availability of free broadband Internet access would result in a dramatic change for the millions of Americans who are priced out of the current broadband marketplace—and are therefore priced out of the newest marketplace of information, entertainment, and ideas.	<i>See</i> MMTC Comments at 11-13
Whether M2Z's Service Will Bridge the Digital Divide	Not addressed	The availability of M2Z's free, nationwide broadband wireless network would have profound implications for our nation's ability to meet the challenge of making broadband available to every American.	<i>See</i> M2Z Application at 12; MMTC Comments at 6-10
Whether M2Z's Service Is Family-Friendly	Not addressed	M2Z's proposed free service will include content filtering to protect children from obscene and indecent content.	<i>See</i> M2Z Application at 24 & Appendix 3; M2Z Motion to Dismiss at 27-28

M2Z – RELATED DOCUMENTS REFERENCED ABOVE

(1)	M2Z Application available at: http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518909425
(2)	M2Z Forbearance Petition available at: http://www.m2znetworks.com/xres/uploads/documents/M2Z-Forbearance-Petition.pdf
(3)	M2Z Opposition available at: http://www.m2znetworks.com/xres/uploads/documents/Opposition%20to%20Petitions%20to%20Deny%20small.pdf
(4)	M2Z Motion to Dismiss available at: http://www.m2znetworks.com/xres/uploads/documents/Motion%20to%20Dismiss.pdf
(5)	M2Z Response available at: http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519123316
(6)	Simon J. Wilkie, Ph.D: “Auctions are Not a Panacea” available at: http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518915047
(7)	Simon J. Wilkie, Ph.D: “Consumer Welfare Impact of M2Z Networks, Inc. Wireless Broadband Proposal” available at: http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518909371
(8)	Kostas Liopiros “The Public Interest Commitments and the Cost of Delay to American Consumers” available at: http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518913247
(9)	MMTC Comments available at: http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518909066
(10)	“Communicating Effectively When Disaster Strikes” available at: http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518725743
(11)	M2Z Reply available at: http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519008636

ATTACHMENT D
COMPARISON OF M2Z PROPOSAL
WITH ALTERNATIVE PROPOSALS

	M2Z	OPEN RANGE	NEXTWAVE	COMMNET	NETFREEUS	MCELROY	TOWERSTREAM
Licensing Regime	Nationwide exclusive license, single operator	Exclusive license for rural areas	Nationwide non-exclusive licenses, multiple licensees and operators	Nationwide exclusive license, single operator	Will operate a secondary market to re-lease spectrum to operators	Nationwide exclusive license, single operator	Nationwide exclusive license in top 200 MSAs
Free Service	Free consumer broadband service at 384 kbps	No free service	No free service	No free service	Lessees are responsible for delivering free service	“Substantially similar to M2Z”	No free service
Buildout Commitments	95% of US with intermediate milestones, as condition of license	No commitment; estimates coverage of 6.2M ‘rural’ pops; network forecasted to serve 428,000 subs after 5 years	No buildout commitments	Commits to serve up to 2/3 of U.S. population as license condition; expects to serve 90% within 10 years; slower intermediate milestones	“Substantial service” to 50% of markets in 4 years, 75% in 6 years, and 95% in 10 years; BUT vague and limiting safe harbors	“Substantially similar to M2Z”	50% of MSA population in licensed service area in 5 years, 75% in 10 years, and 90% of RSAs in 10 years
Net Benefit to USF	Will not take from USF and will pay into USF; reduces USF funding requirements	No, partial benefit to USF through free services to K-12 education and medical facilities	Not addressed	Not addressed	Not addressed	No, will not take from USF	Not addressed
Family Friendly	Content filtered in network; safe for children	Not addressed	No	No	No	“Substantially similar to M2Z”	Optional filtering

	M2Z	OPEN RANGE	NEXTWAVE	COMMNET	NETFREEUS	MCELROY	TOWERSTREAM
Public Safety	Free as primary or secondary network, prioritized traffic, pre-emption in emergencies	Only “priority” for first responders in emergencies	None	Basic service will be free for public safety. No prioritization or pre-emption	Yes. No prioritized traffic, but will do pre-emption in emergencies	“Substantially similar to M2Z”	Only “priority” for public safety entities
Spectrum Usage Fee	5% of premium revenues	None	None	\$50M upon first renewal of license	5% of gross revenues, no clear business model	Will not make 5% payment	Will not make 5% payment
New Entrant	Yes	Yes	No	No	No	No	No
Economic and Consumer Welfare Benefits	\$18B-\$25B in consumer benefit over 15-year term of license	Not quantified	Not quantified	Not addressed	Not quantified	Not quantified	Not addressed
Interference Protection and Other Specific Technical Service Rules	Will protect incumbents under Part 27 rules	No specified technical and service rules	Will operate under 3.65 GHz service rules	No specified technical and service rules	Will protect incumbents under Parts 22, 27, and 101 rules	No specified technical and service rules	No specified technical and service rules
Spectrally Efficient Technologies	TDD, AAS, and OFDMA technologies	Not specified	Contention-based technology	OFDMA/WiMax	Reprogrammed Wi-Fi technology (not viable)	TDD, AAS, and OFDMA technologies	TDD and AAS
Financial Qualifications	\$400M in secured funding	No secured funding	No details on funding	No details on funding	No details on funding	No details on funding	No details on funding
CMRS Obligations	Regulated as CMRS provider	Not specified	Not specified	No, regulated as BRS provider	Regulated as CMRS provider	Not specified	Not specified

COLOR KEY: = Substantially similar to M2Z Application

= Somewhat similar to M2Z Application

= No showing or substantially different from M2Z Application